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October Term 1995

UNITED STATES OF AMERICA,

Petitioner,

V.

COMMONWEALTH OF VIRGINIA, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF AMICI CURIAE IN SUPPORT OF RESPONDENTS BY DR. KENNETH E. CLARK, MIRIAM B. CLARK, DR. JAMES E. COLVARD, PROFESSOR SUSAN ESTRICH, SALLY HELGESEN, SARA N. KING AND PROFESSOR DAVID RIESMAN

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INTEREST OF *AMICI CURIAE*

Amici Curiae are scholars and educators who have a professional interest and expertise in women's education and leadership development.[1]

Included among *amici* are members of the External Advisory Council of the Virginia Women's Institute for Leadership (VWIL) at Mary Baldwin College. The External Advisory Council recommends instructional content and methods for teaching leadership; suggests resources that can be used for leadership courses, including practica; and advises VWIL on assessment and evaluation approaches and tools. The External Advisory Council challenges VWIL to meet the standards it set, to maintain high academic standards, and to demonstrate the effectiveness of the program through objective criteria.

As educators and as members of the Advisory Council, *amici* believe VWIL enhances educational opportunities for women and provides an innovative and excellent program for personal and academic development. VWIL fully prepares women to forge successful careers in any field they choose, including business, government, academia, the professions, and the military. *Amici* are committed to the advancement of women in every aspect of society. They reject the charge of *amici* for the United States that VWIL embodies stereotypes and that single-gender education stigmatizes the excluded gender.

Amici are appearing in this proceeding on behalf of respondents, by consent of the parties, to urge the constitutionality of public support for excellent, innovative educa-

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[1]Descriptions of the *amici* are set forth in the attached appendix.

tion programs like VWIL and to advocate affirmance of the constitutionality of the single-gender programs of higher education in the Commonwealth of Virginia.

SUMMARY OF ARGUMENT

The Virginia Women's Institute for Leadership presents an extraordinary educational opportunity for women. It combines the proven success of single-gender education for women with a cutting-edge leadership program. Educators with many years of first-hand experience in single-gender education shaped the program and based it solidly on contemporary scholarship in leadership development. VWIL prepares young women to attain and succeed in leadership positions in all aspects of life. The philosophy embodied in the program rejects all "fixed notions concerning the roles and abilities of males and females." *Mississippi Univ. For Women v. Hogan*, 458 U.S. 718, 725 (1982). It assumes that no role is inappropriate for women and embodies no stereotypes in its mission or design; VWIL graduates will have the ambition and the ability to succeed in any future role they may choose.

VWIL is an important advance in women's education. In the professional judgment of *amici*, VWIL has been artfully designed and intelligently implemented. It is achieving its goals. It provides, for those young women who choose it, an extremely beneficial alternative to co-education.

ARGUMENT

A. THE VWIL PROGRAM EMBODIES SUCCESSFUL EDUCATIONAL MODELS, IS COMMITTED TO THE ADVANCEMENT OF WOMEN, AND REJECTS ANY STEREOTYPE REGARDING THE ABILITIES AND ROLES OF WOMEN.

The mission and goals of VWIL replicate those of the successful men's program at the Virginia Military Institute. Both programs emphasize the development of self-discipline and self-confidence, physical fitness, intellectual rigor, and personal integrity. Both prepare students for successful careers in a variety of fields, with the option of a commission in any of the military services. VWIL's mission and goals thus reflect the belief that gender cannot predict ability and will not limit a person's role in society. VWIL rejects the proposition that there is a "difference in the respective spheres and destinies of man and woman." *Bradwell v. State*, 83 U.S. (16 Wall) 130, 141 (1872).

VWIL is a highly challenging program: each component is in itself rigorous, and for students to succeed in all the components requires a highly structured and demanding schedule. Its reliance on community and mutual support reflects current scholarship on leadership development; it also responds to a developmental pattern observed in many young women, in whom self-confidence often drops during adolescence.[2] VWIL offers young women a unique and valuable opportunity rather than a superficial equality.

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[2] *See, e.g.*, Alexander W. Astin, *What Matters in College?* (Jossey-Bass 1993) at 404-405; Lodged Materials at 329-30.

The VWIL methodology employs cutting-edge knowledge about leadership and character development and is enhanced by the single-gender setting. It provides a holistic, residential learning environment that encompasses all aspects of the student's life and personal development: academics, physical training, extracurricular activities, community service, and residence life. It provides a variety of leadership experiences as well as attention to theory. Within the program is embodied the belief that there is no one leadership style that is appropriate for women or for men.[3] Students become adept at a broad range of leadership styles and learn to adapt to different situations.

The four components of the program – the academic, physical, military, and co-curricular – are interrelated.

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[3]The Task Force at Mary Baldwin College that designed VWIL specifically rejected any "male" or "female" model of leadership. The Task Force reviewed the extensive body of research on leadership theory and practice. It concluded as follows:

> Recent research in leadership theory and practice deals in complex ways with the contrast between "hierarchical" and "interactive" leadership. Though historical and empirical evidence tends to identify the former with males and the latter with females, we reject the view that the models can only be gender specific. There are not merely two leadership styles; there are in fact a variety of combinations, and for the effective leader, context determines which is the best model. The successful leader therefore will be one who is able to define the context, gauge the environment of any enterprise, clarify the purpose of any group task, and bring to bear the mode(s) of leadership appropriate to the group and its purpose.

Lodged Materials at 328.

The combination of the components is more significant than any single component.

The academic requirements emphasize mathematics, laboratory sciences, foreign language, computer literacy and leadership. The VWIL curriculum is unique in the number of science and mathematics courses it requires within a liberal arts program, providing all students with important analytical tools and familiarity with the scientific method. It also encourages women to explore and excel in the male-dominated fields of math and science, in contrast to the track record of coeducational institutions in this regard.[4] Like the math and science requirements, the proficiency requirements in foreign language and computer literacy reflect a realistic assessment of skills that have become necessary for leaders in practically every field. The increasing influence of globalization and technology on every aspect of life provide expanding opportunity for leadership for those who are adept at communicating and utilizing a variety of media.[5]

In addition, VWIL students must pass four interdisciplinary leadership courses designed specifically for VWIL: Leadership Communications; History and Theories of Leadership; Ethics, Community and Leadership; and a seminar. These courses provide a theoretical base against which students test their own experiences, inculcate specific skills necessary to the practice of leadership, and foster

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[4]*See, e.g.*, Am. Ass'n of Univ. Women Educ. Found., *How Schools Shortchange Girls* (1992).

[5]The option of earning an engineering degree through Mary Baldwin College's joint program with the University of Virginia will encourage ambitions in engineering that otherwise might not have materialized.

reflection on the ethical dimensions of responsible leadership.

The physical training component of the program incorporates eight semesters of physical and health education, regular physical training, and mandatory fitness as measured by a strength and endurance test. It develops the stamina and discipline necessary for successful careers and leadership in every field. In addition, it helps students learn to manage stress and inculcates a lifelong commitment to fitness and health. Physical preparedness is as important for a business career as for a military career. Another benefit of the intensive physical training is that even in their first semester, students progress relatively quickly and measurably toward specific goals, underscoring the program's emphasis on challenging the students to attain ever higher goals.

Professional military training is provided principally through mandatory ROTC. ROTC is not only a preferred route to a commission and a military career, it also provides leadership experience and understanding of various systems and organizations. Through military training, VWIL students recognize the importance of accepting responsibility and of self-discipline.

The fourth component, the co-curricular program, provides a bonding experience within the context of the cohort of women. It incorporates physically and mentally challenging team-building activities (such as ropes courses) that force the students to take risks, challenge themselves, depend on others, and work together. Other aspects of the co-curriculum, including residence life and student government, provide opportunities to practice leadership as participants in VWIL and as members of the larger college and surrounding community.

Important to all four components of the program are four concepts based on current knowledge of how leadership skills are developed: creating a learning community, accepting challenge, joining theory and practice (praxis), and reflecting on experience. Creating a community is important to provide support for the individual and to enforce standards. Further, leaders build community; they have interpersonal skills and can bring people together to get things done. Leaders accept challenges and take risks; they have the confidence and self-respect to propose ideas and take action before others are willing to do so. Leaders think about what they do; they test theory against experience, and use experience to modify theory. They also react positively to feedback. Leaders are ethical and they know the importance of acting in accordance with their beliefs. Exposure to these concepts is embedded in all aspects of the VWIL program, and students have many opportunities to practice and develop the skills involved.

VWIL is well crafted. Mary Baldwin College is dedicated to making the program work. This commitment and the professional caliber of its administration are important to its success. The program was designed by experts in women's education and is the "product of analysis rather than a stereotyped reaction based on [h]abit." *Metro Broadcasting v. F.C.C.*, 497 U.S. 547, 582-83 (1990) (citation omitted) (discussing intermediate scrutiny standard), *overruled on other grounds, Adarand Constructors, Inc. v. Pena*, 115 S. Ct. 2097, 2112 (1995). It reflects their "reasoned analysis" that it will succeed, and it is succeeding. Appropriate comparative assessment tools are in place. Ongoing assessment provides feedback to students on their progress, information to Mary Baldwin College about VWIL's success in accomplishing its goals, and data for continuing review by the External Advisory Council. In short, there is already in place the mechanism for "continu-

ing review by qualified professional educators" that was directed by the Court of Appeals. *United States v. Commonwealth of Virginia*, 44 F.3d 1229, 1242 (4th Cir. 1995), *cert. granted*, 116 S. Ct. 281 (1995).

VWIL is dedicated to the education of women for success as leaders in every field imaginable. It is not based on stereotypes but on current scholarship on the best ways to develop leadership skills.[6] The differences in methodology between VWIL and VMI reflect professional judgments with which we agree.

B. THE SIGNIFICANT BENEFITS OF SINGLE-SEX EDUCATION ARE NOT PRECLUDED BY THE UNITED STATES CONSTITUTION

Single-sex education, especially for girls and young women, provides significant advantages.[7] Single-sex classes are now being advocated by some educators as an alternative to the documented shortchanging of females in coeducational settings.[8] To be sure, the problems of coeducational learning environments need to be addressed and fixed. Nonetheless, single-sex education is and will continue to be optimal for some students.

[6]The VWIL Task Force listed some of the contemporary scholarship on leadership theory and development that its members read and discussed in developing VWIL in a document titled "Women and Leadership: A Selected Bibliography." Lodged Materials at 348-355. The Task Force looked well "beyond the surface before making [its] judgments. . . ." *J.E.B. v. Alabama, ex rel. T.B.*, 114 S. Ct. 1419, 1427 n. 11 (1994).

[7]The scholarly literature on the benefits of single-gender education continues to proliferate. *See, e.g.*, Kim & Alvarez, *Women-Only Colleges: Some Unanticipated Consequences*, 66 J. Higher Educ. 641 (Nov./Dec. 1995); U.S. Dep't of Educ., *Single-Sex Schooling: Proponents Speak, A Special Report from the Office of Educational Research and Improvement*, (Debra Hollinger, Rebecca Adamson, Eds.) Vol. II (1992).

The benefits of single-sex education for women are well documented.[9] Graduates of women's colleges do better than graduates of co-educational colleges in terms of test scores, graduate school admissions, number of earned doctorates, salaries and personal satisfaction. One-third of the female board members of Fortune 1000 companies are graduates of women's colleges, even though those colleges contribute less than 4% of total female graduates. Forty-three percent of the math doctorates and 50% of the engineering doctorates earned by female liberal arts college graduates are earned by graduates of women's colleges. Graduates of women's colleges outnumber all other female

[8]Am. Ass'n of Univ. Women Educ. Found., *How Schools Shortchange Girls* (1992); Am. Ass'n of Univ. Women Educ. Found., *Growing Smart: What's Working for Girls in School* (1995).

[9]There "is a body of research carried out since the late 1960's which shows that graduates of women's colleges are more likely to become achievers than are the women graduates of coeducational institutions." Tidball, M. Elizabeth, *Women's Colleges: Exceptional Conditions, Not Exceptional Talent, Produce High Achievers* in *Educating the Majority* (Carol Pearson, Donna Shavlik, and Judith Touchton, Eds., 1989) at 157, 160 (hereinafter *Women's Colleges*). Based on this and other empirical data, Professor Tidball concludes, among other things, that "[w]omen's colleges have an unparalleled record of graduating women who attain a variety of measurable post-college accomplishments;" that "the environment of women's colleges is more enabling of women than is that of coeducational institutions;" and that "women in coeducational settings are far less likely to have tested either their interest or their skills in leadership roles." *Id.* at 157, 160-61, 166. In short, women's colleges "represent a strong force for the achievement of women." *Id.* at 157.

entries in *Who's Who*. Graduates of women's colleges are more than twice as likely as graduates of coeducational colleges to receive doctoral degrees, and to enter medical school and receive doctorates in the natural sciences.[10] Almost half of the women college graduates in the workforce hold traditionally male-dominated jobs at the higher end of the pay scale.

Although the research demonstrates that single-sex education works for many women, the reasons for its success need to be more clearly understood. Culture and society, biologically influenced patterns of development and behavior, presence of female role-models, and teaching style have all been cited in various studies. Another factor seems to be simply the absence of the opposite sex, removing sexual tensions and romantic distractions from the educational arena. A recent study by the United States Department of Education urges continuing experimentation and review of single-sex programs in order to enhance our understanding of the reasons for their extraordinary effectiveness. *See Single Sex Schooling: Perspectives From Practice and Research, A Special Report From The Office of Educational Research and Improvement*, U.S. Dep't of Educ. (Debra Hollinger, Ed.) Vol. I (1992); *Single Sex Schooling: Proponents Speak, A Special Report From The Office of Educational Research and Improvement*, U.S. Dep't of Educ. (Debra Hollinger, Rebecca Adamson, Eds.) Vol. II (1992).

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[10]*See, e.g.*, Tidball & Kistiakowsky, *Baccalaureate Origins of American Scientists and Scholars*, 198 Science 645 (1976); Tidball, *Baccalaureate Origins of Entrants into American Medical Schools*, 56 J. Higher Educ. 385 (1985); Tidball, *Baccalaureate Origins of Recent Natural Science Doctorates*, 52 J. Higher Educ. 606 (1986); Tidball, *Women's Colleges* at 160.

Educational theory and practice evolve with study and experimentation. Although coeducation was widely touted both popularly and in academia in the 1960s and 1970s, contemporary scholarship is revisiting the issue and finding value in single-sex education. We believe that the Constitution of the United States is not a hurdle to continuing the expansion of our knowledge of how to provide the best education to girls, boys, young women and young men. Because single-sex education demonstrably responds to educational needs, it is substantially related to an important governmental purpose. *Mississippi Univ. for Women*, 458 U.S. at 724.

C. PUBLIC FUNDING IS IMPORTANT TO THE AVAILABILITY OF SINGLE-SEX EDUCATION

Since the benefits of single-sex education are increasingly demonstrable, it would be ironic indeed to limit its availability to that minority of our society who can afford private education. The experience of Mary Baldwin College to date with the VWIL program demonstrates the importance of public funding. A survey of the initial entering class of 42 women disclosed that many could not have attended the program in the absence of the public funding, which reduced the tuition and other expenses of the program.

The importance of public support for single-sex education also is demonstrated by the increasing understanding that single-sex education and development of leadership skills are particularly beneficial to those from lower income families. The experience of the Ronald Coleman Elementary School in Baltimore is an excellent example. An inner city school in a poor neighborhood, it provides single-sex classes in the first through fifth grades for boys and girls.

Teachers report that both girls and boys are improving academically. Furthermore, some educational leaders believe that all-male classes may reduce the disastrous dropout rate of inner-city youth.

To invoke the Equal Protection Clause to deny public funding for single-sex education would deprive many young people of a valuable educational opportunity, one that could give them the skills to achieve a truer equality as they take their places as adult citizens in the workplace, in the political sphere, and in the community.

D. SINGLE-SEX EDUCATION AND VWIL ARE IMPORTANT AND SHOULD BE UPHELD BY THIS COURT

For all the reasons stated above, *amici* urge that affirmance of the VWIL remedy is important to the future of education in this country. We believe that the VWIL program will produce ambitious and successful graduates and that this success will nullify any theoretical stigma that others contend results from limiting VMI to men. One principle that appears firmly established in higher education is that a diversity of educational options is important to respond to the interests and needs of students. Education is preparation for equality in life. By limiting opportunities and benefits in the name of equality in theory, we may ultimately deny equality in fact. Because the Commonwealth of Virginia has now undertaken to provide an effective single-sex educational experience to both young women and young men, we urge affirmance of the remedy.

CONCLUSION

For these reasons, *amici* respectfully request that the judgment of the Court of Appeals upholding the constitutionality of VWIL and VMI be affirmed.

Respectfully submitted,

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December 15, 1995

APPENDIX

APPENDIX

Dr. Kenneth E. Clark is the Smith Richardson Senior Scientist at the Center for Creative Leadership in Greensboro, North Carolina. He has served as Dean of the College of Arts and Science at the University of Colorado (1961-1963), and at the University of Rochester (1963-1980). He is past president of the American Board in Professional Psychology and the American Psychological Foundation, served on the National Medal of Science Committee and was chairman of the Association for the Advancement of Psychology and the American Conference of Academic Deans. He is President-Elect of the Society for Psychologists in Management. He is also a founding fellow of the American Association for the Advancement of Science, and the American Psychological Association. He has served as a consultant to the White House, the Office of Science and Technology, the Army and the Navy, among other entities. Among his publications, he has co-authored *Measures of Leadership*, *Impact of Leadership*, and *Choosing to Lead*. Dr. Clark also edited for ten years the *Journal of Applied Psychology*.

Miriam B. Clark is the former Associate Dean of the College of Arts and Science at the University of Rochester and an educational consultant. Among her publications, she has co-authored *The Graduate Student as Teacher*, *Leadership Education: A Source Book* (in three editions 1985, 1987, 1990), *Measures of Leadership*, and *Impact of Leadership*. With Dr. Kenneth E. Clark, her latest book is *Choosing to Lead*.

Dr. James E. Colvard currently is a visiting professor of Public Administration at Virginia Polytechnic Institute and State University. He also lectures or has

lectured on executive development at the University of Virginia, Indiana University, George Washington University and Johns Hopkins University and at the Kennedy School of Government at Harvard University. Dr. Colvard has earned the Presidential Rank of Distinguished Executive from Presidents Carter and Reagan. The citation for both awards commended significant accomplishments in the advancement of women and minorities. He has also served as Deputy Chief of the Naval Material Command, and Deputy Director of the United States Office of Personnel Management.

Susan Estrich is Robert Kingsley Professor of Law and Political Science at the University of Southern California. She previously was a professor at Harvard University and was the first woman to manage a presidential campaign. She earned her B.A. from Wellesley College, and her J.D. from Harvard University. She writes frequently about issues involving law and gender.

Sally Helgesen is an author and popular speaker whose expertise centers on the pivotal role of women in the emerging workplace. She addresses how profound changes in technology, demographics and the economy are creating unprecedented opportunities for women's talents and skills in the public arena. She is the author of *The Female Advantage: Women's Ways of Leadership*. Presently, Sally Helgesen is undertaking a major study of the role working women play in transforming the post-Industrial economy. Ms. Helgesen is a board member of Women's Collateral Funding.

Sara N. King is a program director in the Leadership and Creativity Development group at the Center for Creative Leadership in Greensboro, North Carolina. She is

the program manager for the Foundation's Leadership Program and the site manager for The Women's Leadership Program. She also co-edited two Center publications highlighting leadership education programs and courses in higher education settings: *Leadership Education 1987: A Source Book* and *Leadership Education 1992-1993: A Source Book.*

David Riesman is Henry Ford II Professor of Social Sciences, Emeritus, at Harvard University. He is an expert in sociology, with a particular emphasis on culture, personality and character, higher education in the United States and single-sex education. He holds a bachelor's degree from Harvard College, a law degree from Harvard Law School and honorary degrees from more than twenty institutions. After completing a year of postgraduate study, he served as the last law clerk to Justice Louis D. Brandeis of the United States Supreme Court. He taught at Buffalo School of Law, and served as a research fellow at Columbia University of Law in sociology and anthropology. He joined the faculty at the University of Chicago in 1946, and returned to Harvard in 1958. He has focused his research in recent years on the development and present state of American higher education. His many publications include *The Lonely Crowd* (1950); *Constraint and Variety in American Education* (1956); *The Academic Revolution* (with Christopher Jencks 1968); and *On Higher Education: The Academic Enterprise in an Era of Rising Student Consumerism* (with several collaborators 1980). His latest book is *Choosing a College President: Opportunities and Constraints* (1990).